

House File 2395

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AN ACT
CREATING THE CRIMINAL OFFENSE OF INTELLECTUAL PROPERTY
COUNTERFEITING, AND PROVIDING A PENALTY.
BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
Section 1. NEW SECTION. 714.26 INTELLECTUAL PROPERTY
COUNTERFEITING.
1. DEFINITIONS. As used in this section unless the
context otherwise requires:
a. "Counterfeit mark" means any unauthorized reproduction
or copy of intellectual property, or intellectual property
affixed to any item knowingly sold, offered for sale,
manufactured, or distributed, or identifying services offered
or rendered, without authority of the owner of the
intellectual property.
b. "Intellectual property" means any trademark, service
mark, trade name, label, term, device, design, or word adopted
or used by a person to identify the items or services of the
person.
c. "Retail value" means the highest value of an item
determined by any reasonable standard at the time the item
bearing or identified by a counterfeit mark is seized. If a
seized item bearing or identified by a counterfeit mark is a
component of a finished product, "retail value" also means the
highest value, determined by any reasonable standard, of the
finished product on which the component would have been
utilized. The retail value shall be the retail value of the
aggregate quantity of all items seized which bear or are
identified by a counterfeit mark. For purposes of this
paragraph, reasonable standard includes but is not limited the
to market value within the community, actual value,
replacement value, or the counterfeiter's regular selling
price for the item bearing or identified by a counterfeit
mark, or the intellectual property owner's regular selling
price for an item similar to the item bearing or identified by
a counterfeit mark.
2. CRIMINAL OFFENSE. A person who knowingly manufactures,
produces, displays, advertises, distributes, offers for sale,
sells, possesses with intent to sell or distributes any item
or knowingly provides service bearing or identified by a
counterfeit mark commits intellectual property counterfeiting.
a. A person commits intellectual property counterfeiting
in the first degree if any of the following apply:
(1) The person is manufacturing or producing an item
bearing or identified by a counterfeit mark.
(2) The offense involves more than one thousand items
bearing or identified by a counterfeit mark or the total
retail value of such items is equal to or greater than ten
thousand dollars.
(3) The offense is a third or subsequent violation of this
section.
Intellectual property counterfeiting in the first degree is
a class "C" felony.
b. A person commits intellectual property counterfeiting
in the second degree if any of the following apply:
(1) The offense involves more than one hundred items but
does not involve more than one thousand items bearing or
identified by a counterfeit mark or the total retail value of
such items is equal to or greater than one thousand dollars
but less than ten thousand dollars.
(2) The offense is a second violation of this section.
Intellectual property counterfeiting in the second degree
is a class "D" felony.
c. All intellectual property counterfeiting which is not
intellectual property counterfeiting in the first degree or
second degree is intellectual property counterfeiting in the
third degree. Intellectual property counterfeiting in the
third degree is an aggravated misdemeanor.
3. EVIDENCE. Any state or federal certificate of
registration of any intellectual property shall be prima facie
evidence of ownership of the intellectual property in dispute.
4. SEIZURE AND DISPOSITION. Any items bearing or

3 6 identified by a counterfeit mark, and all personal property,
3 7 including but not limited to any items, objects, tools,
3 8 machines, equipment, instrumentalities, or vehicles used in
3 9 connection with a violation of this section, shall be seized
3 10 by any law enforcement agency.

3 11 a. All seized personal property shall be disposed of in
3 12 accordance with section 809.5 or as provided in paragraph "b".

3 13 b. Upon request of the intellectual property owner, all
3 14 seized items bearing or identified by a counterfeit mark shall
3 15 be released by the seizing agency to the intellectual property
3 16 owner for destruction or disposition. If the intellectual
3 17 property owner does not request release of the seized items,
3 18 the items shall be destroyed unless the intellectual property
3 19 owner consents to another disposition.

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3 23 CHRISTOPHER C. RANTS

3 24 Speaker of the House

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3 28 JEFFREY M. LAMBERTI

3 29 President of the Senate

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3 31 I hereby certify that this bill originated in the House and
3 32 is known as House File 2395, Eightieth General Assembly.

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4 1 MARGARET THOMSON

4 2 Chief Clerk of the House

4 3 Approved _____, 2004

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4 7 THOMAS J. VILSACK

4 8 Governor